

Message Text

UNCLASSIFIED

PAGE 01 TOKYO 05932 01 OF 03 070943Z
ACTION COME-00

INFO OCT-01 EA-12 IO-14 ISO-00 EB-08 STR-07 TRSE-00
LAB-04 AGRE-00 DODE-00 CEA-01 CIAE-00 FRB-01 H-02
INR-10 INT-05 L-03 NSAE-00 NSC-05 PA-02 CTME-00
AID-05 SS-15 ITC-01 ICA-20 SP-02 SOE-02 OMB-01
DOE-15 /136 W

-----035399 071027Z /20

P 070925Z APR 78

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC PRIORITY 6893

USMISSION GENEVA PRIORITY

UNCLAS SECTION 01 OF 03 TOKYO 05932

MTN

E.O. 11652:NA

TAGS: ETRD, MTN, JA, US

SUBJECT: DESCRIPTION OF JAPANESE GOVERNMENT PROCUREMENT
. REGULATIONS AND PROCEDURES

REF: (A) TOKYO 5273, (B) TOKYO 4351, (C) STATE 68118,
. (D) STATE 66974, (E) STATE 61254, (F) TOKYO 3256

1. SUMMARY: JAPANESE GOVERNMENT PROCUREMENT PRACTICE
IS A HIGHLY DECENTRALIZED SYSTEM THAT PLACES MAXIMUM
AUTHORITY AT THE LOWEST POSSIBLE WORKING LEVEL. THE
LIMITED STATUTORY BASIS AND NARROW COVERAGE OF GOJ
PROCUREMENT REGULATIONS RELY ON MINISTERIAL AUTONOMY
AND, WHERE NECESSARY, ORAL, UNOFFICIAL, AND EXTRA-
LEGAL ADMINISTRATIVE GUIDANCE. THIS TRADITIONAL
SYSTEM FAVORS PROCUREMENT FROM DOMESTIC SOURCES
THROUGH A LARGE NUMBER OF RELATIVELY SMALL NON-
COMPETITIVE NEGOTIATED CONTRACTS WITH SUPPLIERS WHO
MAINTAIN CLOSE RELATIONS WITH INDIVIDUAL PROCUREMENT
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 TOKYO 05932 01 OF 03 070943Z

OFFICES. THE RECENT GOJ CABINET DECISION ON
LIBERALIZING GOJ PROCUREMENT (REF F) IS EXPECTED TO
BE IMPLEMENTED THROUGH ADMINISTRATIVE GUIDANCE IN
APRIL. END SUMMARY.

2. THIS MESSAGE IS IN RESPONSE TO PARA 4(2) OF REF D, AND
SHOULD BE READ IN CONJUNCTION WITH REFS A, B, AND F.

THE GOJ PROCUREMENT CODE IS EXTREMELY NARROW IN ITS COVERAGE. THE ADMINISTRATIVE LAW PERTAINING TO GOVERNMENT PROCUREMENT APPLIES ONLY TO CENTRAL GOVERNMENT AGENCIES AND MINISTRIES. IT DOES NOT APPLY TO PREFECTURAL, MUNICIPAL, OR LOCAL GOVERNMENTS, NOR DOES IT APPLY TO THE MAZE OF 113 SEMI-GOVERNMENTAL BODIES AT THE NATIONAL LEVEL, AND 6,926 AT THE LOCAL LEVELS.

3. SEMI-GOVERNMENTAL ORGANIZATIONS REPRESENT SIZABLE CURRENT AND POTENTIAL MARKETS FOR AMERICAN PRODUCTS. A LARGE SHARE OF JAPAN'S TRANSPORTATION, COMMUNICATIONS, POWER GENERATING, PUBLIC HOUSING, REGIONAL DEVELOPMENT, AND OTHER INDUSTRY SECTOR DEVELOPMENT PROGRAMS ARE MANAGED OR FUNDED BY SEMI-GOVERNMENTAL ORGANIZATIONS OPERATING IN CLOSE LIAISON WITH CENTRAL GOVERNMENT MINISTRIES OR AGENCIES. WHILE CONDITIONS OF OWNERSHIP, FUNDING, EMPLOYEE STATUS, INTERNAL REGULATIONS, AND DEGREE OF OFFICIAL ADMINISTRATIVE CONTROL DIFFER, ALL NATIONAL LEVEL SEMI-GOVERNMENTAL ORGANIZATIONS SHARE A COMMON ORIGIN IN THEIR ESTABLISHMENT THROUGH NATIONAL LEGISLATION, AND MAINTAIN A CLOSE RELATIONSHIP WITH CERTAIN CENTRAL GOVERNMENT MINISTRIES (SEE REF A).

4. THERE IS A LIMITED STATUTORY BASIS FOR GOJ PROCUREMENT PRACTICE. THE ADMINISTRATIVE LAW PERTAINING TO GOVERNMENT PROCUREMENT, IMPERIAL ORDINANCE NO. 165 OF 1947,
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 TOKYO 05932 01 OF 03 070943Z

RELIES ON INDIVIDUAL MINISTRIES AND AGENCIES TO DRAW UP THEIR OWN SPECIFIC PROCUREMENT CODES BASED ON BROAD LEGAL GUIDELINES.

5. THE GOJ PROCUREMENT SYSTEM IS EXTREMELY DECENTRALIZED. THERE IS NO SINGLE CENTRAL GOVERNMENT PROCUREMENT AGENCY. THE PROCUREMENT SECTION OF THE ACCOUNTING DIVISION OF EACH MINISTRY AND AGENCY DEVELOPS ITS OWN ADMINISTRATIVE PROCEDURES BASED ON THE LEGAL GUIDELINES IN NATIONAL LAW AND THE INTERNAL POLICIES OF THE INDIVIDUAL MINISTRY OR AGENCY. ACTUAL PROCUREMENT RESPONSIBILITY, HOWEVER, IS DELEGATED TO MANY DECENTRALIZED PROCUREMENT OFFICES WITHIN EACH MINISTRY AND AGENCY.

6. GENERAL STATISTICAL INFORMATION ON CURRENT GOJ PROCUREMENT IS NOT MAINTAINED BY ANY SINGLE GOJ MINISTRY OR AGENCY. GOJ ACCOUNTING AND BUDGET INFORMATION IS BROKEN DOWN ON THE BASIS OF OPERATING EXPENSES FOR INDIVIDUAL PROJECTS AND PROGRAMS RATHER THAN ON A MINISTRY-WIDE CAPITAL EQUIPMENT BASIS. BECAUSE INFORMATION ON GOJ CAPITAL EQUIPMENT PROCUREMENT IS NOT MAINTAINED BY ANY CENTRAL AGENCY (SUCH AS OMB OR SSA IN THE U.S.),

OR BY INDIVIDUAL MINISTRIES OR AGENCIES, IT MUST BE
OBTAINED FROM EACH DECENTRALIZED PROCUREMENT OFFICE
WITHIN EACH MINISTRY AND AGENCY. FINANCE MINISTRY
SOURCES ESTIMATE THERE ARE MORE THAN 3,000 SUCH
PROCUREMENT OFFICES IN TOKYO. NEITHER THE ECONOMIC
PLANNING AGENCY NOR THE FINANCE MINISTRY, WHICH WERE
TASKED WITH DRAFTING AND IMPLEMENTING THE RECENT
CABINET DECISION, HAS ANY GENERAL STATISTICAL INFORMATION
ON CURRENT GOJ PROCUREMENT.

7. AVAILABLE STATISTICS ON GOJ PROCUREMENT, EXCEPT
FOR CERTAIN POLITICALLY SENSITIVE PRODUCTS LIKE COMPUTERS,
DO NOT SPECIFY PRODUCT ORIGIN. IN MAY CASES, PARTICULARLY
WHEN PROCUREMENT IS NEGOTIATED THROUGH TRADING COMPANIES
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 TOKYO 05932 01 OF 03 070943Z

OR AGENT, INFORMATION ON PRODUCT ORIGIN IS NOT AVAILABLE.

8. ONLY FIRMS THAT HAVE QUALIFIED, AND HAVE BEEN

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 TOKYO 05932 02 OF 03 070951Z

ACTION COME-00

INFO OCT-01 EA-12 IO-14 ISO-00 AGRE-00 CEA-01 CIAE-00
DODE-00 EB-08 FRB-01 H-02 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-02 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 ICA-20 SP-02 SOE-02 OMB-01
DOE-15 /136 W

-----035564 071033Z /20

P 070925Z APR 78

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC PRIORITY 6894

USMISSION GENEVA PRIORITY

UNCLAS SECTION 02 OF 03 TOKYO 05932

CLASSIFIED AND REGISTERED BY INDIVIDUAL MINISTRIES,
MAY SUBMIT GOVERNMENT BIDS. THE SPECIFIC ADMINISTRATIVE
PROCEDURES AND QUALIFICATIONS FOR SUCH BIDDERS LISTS

ARE ESTABLISHED BY EACH MINISTRY. QUALIFICATIONS GENERALLY FOCUS ON FINANCIAL STABILITY. CLASSIFICATION OF POTENTIAL SUPPLIERS IS BASED ON OBJECTIVE CRITERIA SUCH AS CAPITALIZATION, SALES, NUMBER OF EMPLOYEES, AND PRODUCT LINES, AND ON SUBJECTIVE ASSESSMENTS OF A FIRM'S PAST PERFORMANCE AND MANAGEMENT EXPERIENCE. PROCUREMENT OFFICERS DETERMINE WHICH CLASS OF FIRMS TO INCLUDE IN SOLICITATIONS FOR BIDS. REGISTRATION MUST BE APPLIED FOR ANNUALLY AT EACH MINISTRY AND AGENCY.

9. THE CRITERION FOR AWARDING GOVERNMENT CONTRACTS IS NOT LIMITED TO A DETERMINATION OF THE LOWEST QUALIFIED BIDDER. PROCUREMENT OFFICERS ARE AUTHORIZED TO AWARD CONTRACTS TO THE NEXT LOWEST BIDDER WHEN "IT IS FEARED THE LOWEST BIDDER WILL NOT SATISFY THE CONDITIONS OF THE CONTRACT, OR WHERE THE CONCLUSION OF THE CONTRACT WITH THE LOWEST BIDDER IS LIKELY TO DISTURB THE ORDER OF FAIR TRADE, OR IS CONSIDERED EXTREMELY INAPPROPRIATE."
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 TOKYO 05932 02 OF 03 070951Z

10. BIDDING GUARANTEE DEPOSITS OF 5 PERCENT, AND CONTRACT GUARANTEE DEPOSITS OF 10 PERCENT OF ESTIMATED CONTRACT AMOUNTS, MAY BE REQUIRED. SPECIFIC DEPOSIT PROCEDURES AND WAIVER PROVISIONS ARE LEFT TO EACH MINISTRY AND AGENCY TO BE DECIDED ON A CASE-BY-CASE BASIS.

11. SEVERAL FORMS OF UNOFFICIAL AND EXTRA-LEGAL ADMINISTRATIVE GUIDANCE HAVE BEEN USED BY GOJ CENTRAL GOVERNMENT MINISTRIES AND AGENCIES TO RESTRICT FOREIGN PROCUREMENT. IN SOME CASES, GOJ PROCUREMENT CONTRACTS WITH FOREIGN SUPPLIERS HAVE BEEN MADE CONTINGENT ON USING JAPANESE COMPONENTS OR LICENSING PRODUCTION IN JAPAN. IN OTHER CASES, UNOFFICIAL GOJ MINISTERIAL APPROVAL, OFTEN FROM THE FINANCE MINISTRY OR MITI, HAS BEEN NECESSARY FOR PROCUREMENT OF FOREIGN EQUIPMENT.

12. ADMINISTRATIVE LAW ESTABLISHES GENERAL LEGAL GUIDELINES FOR THREE METHODS OF GOVERNMENT PROCUREMENT: PUBLIC NOTICE, SELECTED TENDER, AND PRIVATE CONTRACT.

13. THE PUBLIC NOTICE SYSTEM IS RARELY USED. GOJ SOURCES HAVE ESTIMATED THAT 90 PERCENT OF GOJ PROCUREMENT IS THROUGH SELECTED TENDER OR PRIVATE CONTRACT.

14. THE INFORMATION CONTAINED IN OFFICIAL PUBLIC PROCUREMENT NOTICES IS LIMITED. ADMINISTRATIVE LAW REQUIRES THAT PUBLIC TENDER NOTICES INCLUDE:
"(A) MATTERS CONCERNING THE TENDER, (B) MATTERS

CONCERNING THE QUALIFICATIONS REQUIRED FOR PARTICIPANTS,
(C) PLACE WHERE THE CONTRACT CONDITIONS ARE SHOWN, (D)
PLACE, DATE, AND TIME FOR EXECUTING THE TENDER, AND
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 TOKYO 05932 02 OF 03 070951Z

(E) MATTERS CONCERNING GUARANTEE DEPOSITS." THE DEGREE
OF SPECIFICITY OF PUBLIC TENDER NOTICES IS DETERMINED
BY INDIVIDUAL PROCUREMENT OFFICERS.

15. PUBLIC TENDER NOTICES ARE GIVEN LIMITED PERFUNCTORY
PUBLICITY. NATIONAL LAW REQUIRES THAT ANNOUNCEMENTS
APPEAR TEN DAYS PRIOR TO THE CLOSING OF BIDS. CONTRACT
OFFICERS ARE AUTHORIZED TO SHORTEN THE TIME TO FIVE DAYS
WHEN PROCUREMENT IS DEEMED URGENT. OFFICIAL NOTICES ARE
NOT PUBLISHED IN ANY PUBLIC OR PRIVATE PERIODICAL,
NOR IS THERE A CENTRAL LOCATION FOR POSTING NOTICES.
GIVEN THE LIMITED INFORMATION, SHORT TIME FRAME, AND
DECENTRALIZED SYSTEM FOR PUBLIC NOTICES, FIRMS WITH AN
ESTABLISHED RELATIONSHIP WITH INDIVIDUAL PROCUREMENT
OFFICES BENEFIT FROM UNOFFICIAL ADVANCED NOTIFICATION
AND DETAILED DISCUSSIONS OF PENDING CONTRACTS.

16. SELECTIVE TENDERS MAY BE USED IN LIEU OF PUBLIC
TENDER NOTICE PROCEDURE WHEN PROCUREMENT OFFICERS
DETERMINE THAT A LIMITED NUMBER OF FIRMS IS INTERESTED,
OR THAT PUBLIC TENDER IS "DISADVANTAGEOUS DEPENDING
ON THE NATURE OF OBJECTIVE OF THE CONTRACT." SELECTIVE
TENDERS MAY ALSO BE USED IN MANY OTHER CIRCUMSTANCES,
INCLUDING, "WHERE THE VALUE OF THE GOODS TO BE PROCURED
IS LESS THAN 5 MILLION YEN (U.S.\$23,000)."

17. SUPPLIERS LISTS FOR SELECTED TENDERS ARE DRAWN FROM
THE REGISTRATION LISTS OF QUALIFIED SUPPLIERS MAINTAINED
BY EACH MINISTRY. INCLUSION IN MINISTRY REGISTRATION
LISTS DOES NOT GUARANTEE PARTICIPATION IN THE SELECTED
TENDER PROCESS. PROCUREMENT OFFICERS SELECT "MORE THAN
TEN PERSONS, IF POSSIBLE" TO SUBMIT BIDS FROM THE CLASS
OF REGISTERED FIRMS APPROPRIATE FOR THE NATURE AND SCALE
OF THE CONTRACT BEING LET. WHERE THE ANNUAL NUMBER OF
CONTRACTS IS SMALL, OR "UNDER OTHER SPECIAL CIRCUMSTANCES,"
PROCUREMENT OFFICERS ARE AUTHORIZED TO DEVELOP THEIR
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 TOKYO 05932 02 OF 03 070951Z

OWN PROCEDURE FOR SOLICITING BIDDERS UNDER THE SELECTIVE
TENDER PROCESS.

18. THE MOST COMMON FORM OF GOJ PROCUREMENT IS THROUGH
NON-COMPETITIVE PRIVATE CONTRACTS WITH INDIVIDUAL SUPPLIERS.
NATIONAL LAW LISTS 24 CASES WHERE PRIVATE CONTRACT

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 TOKYO 05932 03 OF 03 070956Z
ACTION COME-00

INFO OCT-01 EA-12 IO-14 ISO-00 AGRE-00 CEA-01 CIAE-00
DODE-00 EB-08 FRB-01 H-02 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-02 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 ICA-20 SP-02 SOE-02 OMB-01
DOE-15 /136 W
-----035857 071034Z /20

P 070925Z APR 78
FM AMEMBASSY TOKYO
TO SECSTATE WASHDC PRIORITY 6895
USMISSION GENEVA PRIORITY

UNCLAS SECTION 03 OF 03 TOKYO 05932

PROCUREMENT IS AUTHORIZED IN PLACE OF SELECTED TENDER
OR PUBLIC NOTICE PROCEDURES. AMONG THE CASES ARE:

- (1) ACTS OF STATE WHICH MUST BE KEPT CONFIDENTIAL.
- (2) WORK OR MANUFACTURE WHOSE SCHEDULED AMOUNT
DOES NOT EXCEED 1.5 MILLION YEN (U.S.\$6,800).
- (8) CONTRACTS BETWEEN CENTRAL GOVERNMENT AGENCIES
AND MINISTRIES AND ALL PUBLIC CORPORATIONS,
FUNDS, SEMI-GOVERNMENTAL ORGANIZATIONS AND
OTHER INSTITUTIONS ESTABLISHED BY A NATIONAL
LAW.
- (15) CONCLUSION OF A CONTRACT ABROAD.
- (18) DIRECT PURCHASES FROM TRADE COOPERATIVE
ASSOCIATIONS, FEDERATIONS OF TRADE COOPERATIVE
ASSOCIATIONS, COMMERCIAL AND INDUSTRIAL
ASSOCIATIONS OR FEDERATIONS OF COMMERCIAL
AND INDUSTRIAL ASSOCIATIONS, IN ORDER TO
FOSTER THESE ORGANIZATIONS.
- (19) SALES OR LENDING OF ARTICLES NECESSARY FOR
THE PROTECTION OR ENCOURAGEMENT OF SCIENCE
OR TECHNOLOGY.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 TOKYO 05932 03 OF 03 070956Z

19. PROCUREMENT OFFICERS NEGOTIATING NON-COMPETITIVE PRIVATE CONTRACTS ARE REQUIRED TO SOLICIT ESTIMATES FROM MORE THAN TWO ADDITIONAL SOURCES, IF POSSIBLE.

20. LEGISLATIVE HISTORY: THE IMPERIAL ORDINANCE OF 1947 NUMBER 165 IS THE STATUTORY BASIS FOR GOJ PROCUREMENT PROCEDURES DEVELOPED IN EACH CENTRAL GOVERNMENT MINISTRY AND AGENCY. SEMI-GOVERNMENTAL ORGANIZATIONS GENERALLY FOLLOW THESE SAME BROAD GUIDELINES ALTHOUGH ARE NOT FORMALLY COVERED BY THEM.

21. THE 1972 CANCELLATION OF A 1963 CABINET DECISION ENCOURAGING THE USE OF DOMESTIC PRODUCTS REMOVED OFFICIAL BARRIERS TO GOJ PROCUREMENT FROM FOREIGN SUPPLIERS. THE JANUARY 13, 1978 CABINET DECISION (TEXT REF F) ENCOURAGES GREATER EMPHASIS ON NON-DISCRIMINATION IN PROCUREMENT PRACTICE THROUGH:
(1) INCREASED RELIANCE ON PUBLIC TENDER PROCUREMENT,
(2) IMPROVING THE METHOD OF PROVIDING PROCUREMENT INFORMATION, (3) ADJUSTING BIDDING DEADLINES TO INCREASE OPPORTUNITIES FOR PARTICIPATION, AND
(4) IMPROVING OTHER ASPECTS OF BIDDING PROCESS.

22. THE COORDINATION DIVISION OF THE ECONOMIC PLANNING AGENCY DEVELOPED THE CONSENSUS AMONG GOJ MINISTRIES ON WHICH THE RECENT CABINET DECISION WAS BASED. THE CABINET DECISION DOES NOT IMPLY ANY IMPLEMENTING LEGISLATION OR CHANGE IN EXISTING STATUTES, ALTHOUGH IMPLEMENTATION THROUGH ADMINISTRATIVE GUIDANCE FROM THE FINANCE MINISTRY BUDGET IS EXPECTED IN APRIL.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 TOKYO 05932 03 OF 03 070956Z

MANSFIELD

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GOVERNMENT PROCUREMENT, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 07 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978TOKYO05932
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780150-0560
Format: TEL
From: TOKYO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780479/aaaacoxe.tel
Line Count: 376
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 31dd34b4-c288-dd11-92da-001cc4696bcc
Office: ACTION COME
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 TOKYO 5273, 78 TOKYO 4351, 78 STATE 68118
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 04 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3032657
Secure: OPEN
Status: NATIVE
Subject: DESCRIPTION OF JAPANESE GOVERNMENT PROCUREMENT . REGULATIONS AND PROCEDURES
TAGS: ETRD, JA, US, MTN
To: STATE GENEVA
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/31dd34b4-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014